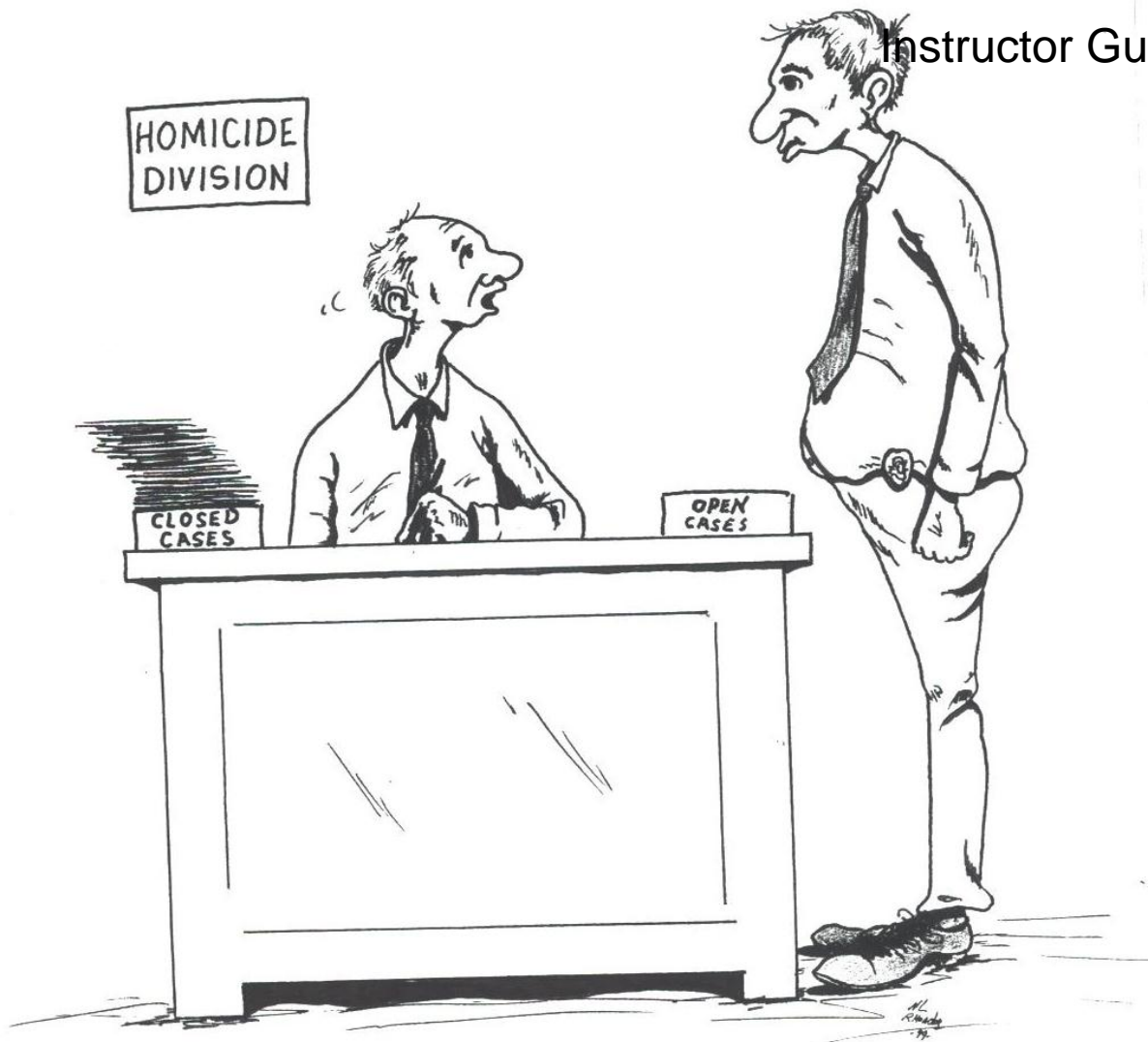


## INTERVIEWS & INTERROGATIONS

### Instructor Guide



If I don't solve it in a couple of weeks,  
I write it off as a suicide.

ADDITIONAL INSTRUCTOR NOTES

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COURSE TITLE: INTERVIEWS AND INTERROGATIONS

INSTRUCTIONAL GOALS: This course is designed to give the student an overview of the interview and interrogation process. The student will understand the difference and the importance of both.

INSTRUCTIONAL OBJECTIVES:

Upon completion of this block of instruction the participant will be able to:

1. Know the difference between interview and interrogation and their definitions.
2. Know the importance of both.
3. Understand the legal requirements concerning interviews and interrogations. Be able to discuss case law pertaining to issues with interview and interrogations

INSTRUCTIONAL METHODS: Class lecture with class participation, handout materials, video and audio presentations and power point presentation

HANDOUTS: Student Study Guide

COURSE DURATION: 2 hrs

CURRICULUM REFERENCES: Lyman, Michael, 1998, Criminal Investigation, The Art and the Science, Prentice Hall; Federal Bureau of Investigation, Interview & Interrogation Course Handbook; The Reid Technique of Interview & Interrogation Handbook.

SAFETY CONSIDERATION: None

EQUIPMENT, PERSONNEL, AND SUPPLIES NEEDED: Computer with Audio/Visual capabilities

TARGET AUDIENCE: Basic Police Officer Cadets/Recruits

COURSE PREREQUISITES: None

INSTRUCTOR CERT.: General Police: Preferred Criminal Investigations Experience

INSTRUCTOR RATIO: None

EVALUATION STRATEGY: New Mexico Law Enforcement Certification Exam

AUTHOR & ORIGINATION DATE: Lt. Pete Kassetas, New Mexico State Police, 2003

REVISION / REVIEW DATE(S): Jan 2014

REVISED / REVIEWED BY: Jan 2014 NMLEA INSTR

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COURSE OUTLINE: INTERVIEWS AND INTERROGATIONS

## Instructional Goals:

1. This course is designed to give the student an overview of the interview and interrogation process. The student will understand the difference and the importance of both.

## Instructional Objectives:

3. Know the difference between interview and interrogation and their definitions.
4. Know the importance of both.
5. Understand the legal requirements concerning interviews and interrogations. Be able to discuss case law pertaining to issues with interview and interrogations.

## I. INTRODUCTION

## II. INTERVIEW VS. INTERROGATIONS

- A. To be a good interviewer or interrogator
- B. During the course of an investigation and the admissibility of such statements.
- C. Definitions: Interview vs. Interrogation
- D. Importance of both
  1. Interview – A major part of any investigation is devoted to interviews.
  2. Interrogations – sometimes conducted while suspect is in custody.
  3. Two types of persons you will deal with

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### III. The Interview Process

A. The interview is a form of communication used extensively by law enforcement. It is used in many ways to learn information from the subject being interviewed. For example: screening job applicants, extracting information from witnesses or victims of a crime, obtaining a confession from a suspect. Interviews of cooperating citizens and witnesses are often conducted outside the office. More often than not, however, the officer will have more productive interviews if conducted at a location where the subject is mentally relaxed, such as his or her own home or place of business. Because of legal and technical considerations, investigators should try to follow certain guidelines when conducting an interview.

Officers should take time to prepare properly for the interview. Sometimes this is done quickly and may consist of no more than a mental review of details of the case. Some type of preparation should precede the actual contact with the interview subject.

B. General qualifications for a successful interview:

C. Rapport

D. Personality

E. Time and Place – the interviewer chooses the time and the place.

F. Preparation – Well-prepared pattern of questions that follows known facts.

G. Warm up period. The first few minutes will establish the atmosphere.

H. Questioning

I. Technique of questioning

J. Special Considerations

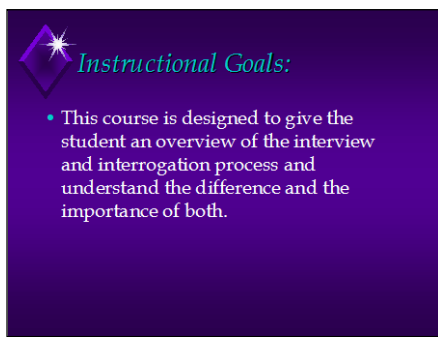
- IV. The Interrogation Process
- V. LEGAL REQUIREMENTS
- VI. CASE LAW
- VII. Conclusion

ADDITIONAL INSTRUCTOR NOTES

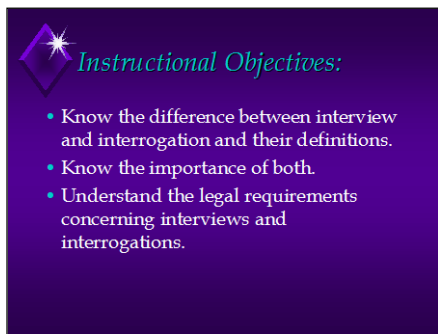


**COURSE CONTENT:****INTERVIEWS AND INTERROGATIONS****INSTRUCTOR NOTES:**

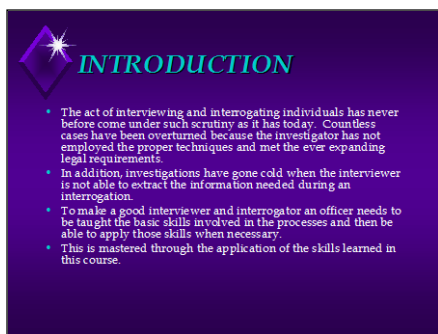
- Introduce Course
- Introduce Self
- Go over classroom and housekeeping rules
- Pass out Student Guide
- Go over Goals and Objectives

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**Instructional Objectives:**


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- Understand the legal requirements concerning interviews and interrogations.

**INTRODUCTION**

- The act of interviewing and interrogating individuals has never before come under such scrutiny as it has today. Countless cases have been overturned because the investigator has not employed the proper techniques and met the ever expanding legal requirements.
- In addition, investigations have gone cold when the interviewer is not able to extract the information needed during an interrogation.



- To make a good interviewer and interrogator an officer needs to be taught the basic skills involved in the processes and then be able to apply those skills when necessary.
- This is mastered through the application of the skills learned in this course




**INTERVIEW VS. INTERROGATIONS**

- To be a good interviewer or interrogator, the investigator must apply certain physical and psychological techniques to the person being interviewed to persuade him or her to divulge information. In the case of the interview, it's the investigator's job to create an atmosphere in which the subject can be relaxed enough to recall and explain details of a suspected crime.


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- When a suspect is being interrogated, the investigator must gently and skillfully break down the subject's defenses to gain an admission or confession and do so while staying within the constraints of constitutional law. It is generally accepted that a person will confess to anything if enough pressure or intimidation is applied. But is a "confession" really a truthful statement under these circumstances? **NO!**

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- During the course of an investigation, many interviews and several interrogations may take place. The distinction may be often blurred, but can be expressed in terms of the purpose of the contact. The investigator needs to be able to distinguish what is an interview and an interrogation in order to avoid issues involving suspect rights and the admissibility of such statements.

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### Definitions

- **Interview:** a relatively formal conversation conducted for the purpose of obtaining information. The person questioned is believed to possess knowledge that is of official interest to the investigator.



- Interviews may involve virtually anyone, including informants, witnesses, victims, cooperating citizens, and even suspects. Notes are taken and major points are reviewed. The interview process occurs either before the case focuses on a particular person or in a place where the suspect can clearly terminate the interview at any time.



- **Interrogation:** a systematic questioning of a person suspected of involvement in a crime for the purpose of obtaining a confession. A conversation to obtain information that someone does not wish to disclose. Custodial questioning is initiated by a law enforcement officer after a person has been taken into custody or otherwise deprived of his freedom of action in a significant way.
- Legal guidelines affecting the two activities differ considerably as the probability increases that the person being questioned may incriminate himself or herself.



### Importance of both

- Interview – A major part of any investigation is devoted to interviews.
- Interview constitutes the major source of information
- May appear to be simple, however, the interview process needs to be well structured, following a pattern

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### *Two types of persons you will deal with*

- Willing – if the person to be interviewed is a willing participant, the only thing required is good interviewing techniques.
- Unwilling – if the individual to be interviewed is an unwilling participant, you must first assist that individual in becoming a willing participant and then use good interviewing technique.
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- Time – as soon as possible. Make sure you have reviewed all available information on the case and the person to be interviewed. Prepare questions in advance to add to the flow of conversation and give direction to the interview.
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[illegible]




*Mentally review the case.*

- Have notes to help guide the questioning. Make a checklist if necessary. Use the checklist only when needed so you can devote your attention to the subject. If possible, obtain some background information on the witness.
- Practice prior to the interview. Run your line of questioning by another agent.
- Think of the answers you would like to hear after a question is asked. In addition, go over answers that you expect to obtain and come up with a way to address missing information provided by a suspect.


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- Warm up period. The first few minutes will establish the atmosphere.
- Establish a common interest.
- If you think it would be helpful, discuss the importance of witness cooperation.
- Establish solid communication.
- Work your way into the case. Transition from the rapport building into the case.
- Questioning

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- Have them amplify on important matters, elements of the offense.
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### *Characteristics of effective and ineffective interviewers*

- Effective interviewers ask more open-ended questions and allow the witness to appear to control the interview.
- Ineffective interviewers ask more direct short-answer questions.
- Ineffective interviewers often interrupt the witness in the middle of a narrative description.
- Ineffective interviewers, by the sequence of their questions, often seem unorganized and generally unaware of the mental activities of the witness.

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### *Technique of questioning*

- One question at a time
- Avoid implied answers – suggesting the answer defeats the purpose. Use simple questions.
- Control the interview
- Avoid rambling interviews
- Redirect questions that were not answered or avoided. Answering a question with a question indicates deceptiveness.

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- Avoid hypothetical questions as they tend to make the interviewee guess at a certain response or to tell the interviewer what he or she wants to hear.
- Avoid asking loaded or leading questions that contain the answer and require the person being interviewed to choose between the lesser of two evils.
- Be a good listener. Let the interviewee speak freely. Listen closely and evaluate not just what is being said, but how it is being said. Listen as well for what is not being said. Control the interview; don't dominate it.

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- Taking brief notes and writing profusely will slow down the interview. The witness may become distracted and forget important details. Some people are naturally nervous speaking in the presence of someone recording everything they say. Brief notes are the prescribed method of recording the conversation. The interviewer should listen carefully and not lose eye contact with the witness.

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**Special Considerations**

- Juveniles – parents must be notified of the purpose of the interview and the nature of the information sought from the juvenile. Juveniles must also be given the right to have their parent or person of their choice with them during the interview.
- Re-interviewing witnesses

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- This should be avoided but may be necessary.
- Adjourn properly. Just as you began with a proper introduction, you should also end properly. You might summarize the interview briefly, and then thank the witness for their time, thus creating a favorable impression and encouraging further cooperation.

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### *The Interrogation Process*

- Definition: An art whereby, through the use of questions and observations, the truth is elicited from a suspect by sound reasoning and understanding without threats or promises.
- The principles of interrogation follow those principles of interviewing.
- All interviewing needs to be completed prior to an interrogation
- Confronting the suspect with your department's opinion can be used in the interrogation process.
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### *Points about the interrogation*

- It is accusatory.
- There should be total domination of the conversation by the interrogator.
- Guilt is certain. Remember, when circumstantial evidence points towards one person, that person may be the person who committed the offense. But you must corroborate that information with known facts.

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- Evidence can be insinuated; baiting questions can deal with the real or nonexistent evidence within reason. You can lie to a suspect during questioning.
- Miranda is required when the suspect is in custody or the suspect has been arrested. If a person invokes his request for an attorney, all questioning must stop. The suspect is the only one who can re-initiate the conversation.


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- “Do you think I need a lawyer” is not an invocation of his right to remain silent; although you cannot make that choice for him. You should clarify through the interview what the suspect’s position is with regard to being interviewed.
- Defendant’s statement after being advised of his Miranda rights, “I don’t know if I will answer them...ask me something,” was a clear waiver of his rights.

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- Miranda warnings are not required where the questions asked are prompted by a concern for public safety. There must be an exigency about the circumstances.
- Time of the interview is not limited, but keep it within 2-4 hours with breaks.
- Privacy is required. No interruptions.
- The use of notes or tape recorders is up to the interrogator. Stay consistent in the use of video and audio recordings when conducting your interrogation.

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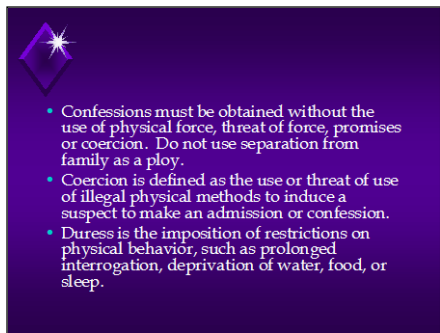
**Goals of the interrogation**

- Get a confession/admission of guilt from suspect.
- Identify the guilty and innocent.
- Identify the truth.
- Develop valuable information (MO and circumstances of the crime).
- Provide information for use by prosecutors in possible court action.

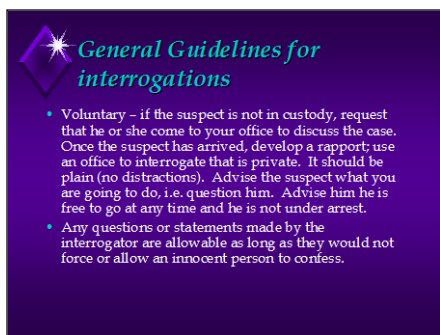
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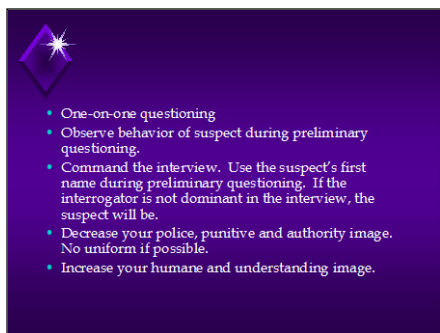


- Confessions must be obtained without the use of physical force, threat of force, promises or coercion. Do not use separation from family as a ploy.
- Coercion is defined as the use or threat of use of illegal physical methods to induce a suspect to make an admission or confession.
- Duress is the imposition of restrictions on physical behavior, such as prolonged interrogation, deprivation of water, food, or sleep.



### General Guidelines for interrogations


- Voluntary – if the suspect is not in custody, request that he or she come to your office to discuss the case. Once the suspect has arrived, develop a rapport; use an office to interrogate that is private. It should be plain (no distractions). Advise the suspect what you are going to do, i.e. question him. Advise him he is free to go at any time and he is not under arrest.
- Any questions or statements made by the interrogator are allowable as long as they would not force or allow an innocent person to confess.



- One-on-one questioning
- Observe behavior of suspect during preliminary questioning.
- Command the interview. Use the suspect's first name during preliminary questioning. If the interrogator is not dominant in the interview, the suspect will be.
- Decrease your police, punitive and authority image. No uniform if possible.
- Increase your humane and understanding image.








- Use “soft” words
- “took” instead of “stole” .
- “Sex with” instead of “rape” .
- “Entered” instead of “burglarized” .
- Use “mistake” instead of “crime” .
- *\*NOTE: illegal acts are like quicksand – once you step into the area, things get worse and worse.*

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- **NOTE:** Small insignificant acts lead to major cases. No matter what the interrogation concerns, this case is different. It is unique, a fluke. The suspect is at a crossroad in his life. Now is his Opportunity to tell the truth.
- A denial is sometimes as good as a confession. Remember that it is hard to keep telling the same story time after time if it did not happen. The suspect has to recall what he told you the time before. The truthful subject will tell you the same story time after time because it really happened. It will not change substantially.

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**Theme development**

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**Theme 3:** Suggest a less revolting and more morally acceptable motivation or reason for the offense.

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- “Was it planned out or an accident”; “You didn’t intend for anyone to get hurt.”
- Self defense. (BE CAREFUL WITH THIS THEME.)

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**Theme 4:** Sympathizing with the suspect by condemning others.

- Condemn the victim, the other accomplice or any other person who some degree of fault can be placed on.

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- Theme 5: Appeal to the suspect's pride by well-selected flattery.
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- Exaggerate the amount of money that was taken.
- Sexual cases: imply consent but the victim got nervous, feared venereal disease, etc.

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### Handling denials

- Cut them off each time. Don't let them complete their denial.
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**Undesirable action vs. Desirable action**

- repulsive                      weakness
- offensive                      someone else's fault
- very serious                      accidental
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- Get the subject to talk about himself.
- Use a tone of voice that establishes believability and sincerity.
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**Suspect Contact**

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- Facial expressions - a calm concerned expression will tell the suspect that the investigator means business. An emotional expression will tell the suspect that the investigator can be dominated. Eye-to-eye contact should be maintained until the suspect looks away. If the suspect looks down, he has submitted. If he looks 45-90 degrees further steps toward dominance are necessary.

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### *RPM formula (Rationalize, Project and Minimize)*

- The psychology of interrogation and how it applies through RPM (Rationalize/ project/ minimize)
- No one likes to admit that they did something wrong. From birth, we rarely admit guilt without first giving some reason, either good or bad, to justify our actions. “She hit me first” or “she started it.”
- As adults, we have not changed. Most of us will not admit to doing wrong without giving some explanation.
- Rationalize

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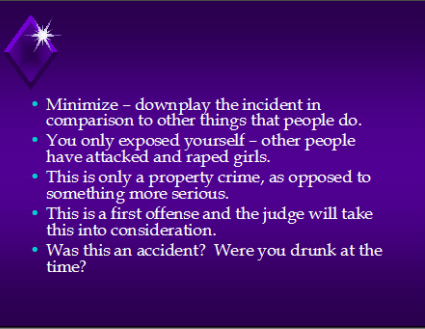
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- Rationalize
- Try to justify the act.
- Minimize the consequences.
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- Projection-- Project the blame on someone else
- Victim left the keys in the car.
- Victim’s style of dress (rape).
- Victim started it and you defended yourself.

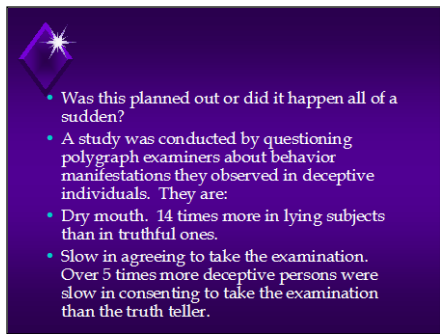


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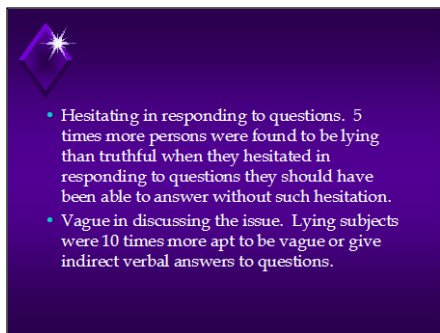
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- Minimize – downplay the incident in comparison to other things that people do.
- You only exposed yourself – other people have attacked and raped girls.
- This is only a property crime, as opposed to something more serious.
- This is a first offense and the judge will take this into consideration.
- Was this an accident? Were you drunk at the time?



- Was this planned out or did it happen all of a sudden?
- A study was conducted by questioning polygraph examiners about behavior manifestations they observed in deceptive individuals. They are:
- Dry mouth. 14 times more in lying subjects than in truthful ones.
- Slow in agreeing to take the examination. Over 5 times more deceptive persons were slow in consenting to take the examination than the truth teller.



- Hesitating in responding to questions. 5 times more persons were found to be lying than truthful when they hesitated in responding to questions they should have been able to answer without such hesitation.
- Vague in discussing the issue. Lying subjects were 10 times more apt to be vague or give indirect verbal answers to questions.





- Poor eye contact. Lying subjects manifested poor eye contact more than 5 times than the truthful subjects.
- Bringing hand to head. The lying subject tended to bring his hand to his head 12 times more than the truthful subject.
- Frequently interrupting the examiner. The liar tended to interrupt the examiner 6 times more than the truthful subject.

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**LEGAL REQUIREMENTS**

- According to early English common law, the confession of a suspect was by far the most important type of evidence against an accused person. In many cases, failure to produce such evidence was the equivalent to not having any evidence at all. Therefore, the investigators vigorously pursued a confession at all costs, with little regard for the rights of those accused or the fairness of their methods.

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- Techniques for obtaining the confession included submersion in water, stretching, branding, and other types of physical and psychological torture. Today, such tactics have been replaced with legal guarantees of fairness, such as the Bill of Rights, the Constitution, and statutes prohibiting the use of coercion or duress in the interrogation process. Still, the confession reigns as one of the most influential types of evidence in a court proceeding.

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• **Fifth Amendment** – no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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• **Due process equals fundamental fairness. Fundamental fairness equals reasonableness/voluntariness**

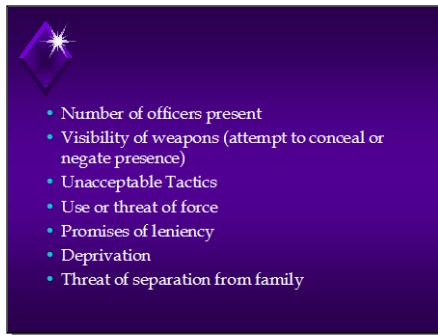
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• Must have the mental ability to know he is confessing.  
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• Criminal sophistication  
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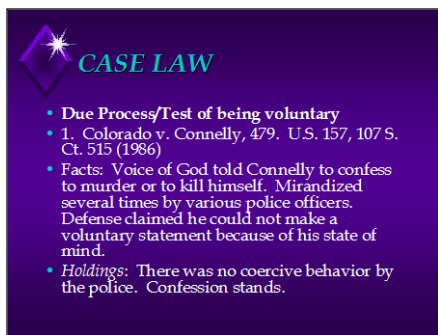
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- Number of officers present
- Visibility of weapons (attempt to conceal or negate presence)
- Unacceptable Tactics
- Use or threat of force
- Promises of leniency
- Deprivation
- Threat of separation from family

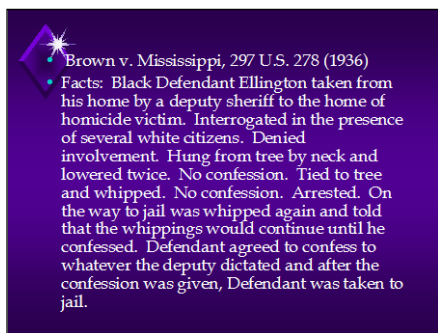


## CASE LAW

### Due Process/Test of being voluntary

#### 1. Colorado v. Connelly, 479 U.S. 157, 107 S. Ct. 515 (1986)

- **Facts:** Voice of God told Connelly to confess to murder or to kill himself. Mirandized several times by various police officers. Defense claimed he could not make a voluntary statement because of his state of mind.
- **Holdings:** There was no coercive behavior by the police. Confession stands.



#### 2. Brown v. Mississippi, 297 U.S. 278 (1936)

- **Facts:** Black Defendant Ellington taken from his home by a deputy sheriff to the home of homicide victim. Interrogated in the presence of several white citizens. Denied involvement. Hung from tree by neck and lowered twice. No confession. Tied to tree and whipped. No confession. Arrested. On the way to jail was whipped again and told that the whippings would continue until he confessed. Defendant agreed to confess to whatever the deputy dictated and after the confession was given, Defendant was taken to jail.

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- Two other Black defendants Brown and Shields arrested the same day and whipped in the jail until confessed to what "the mob" of citizens wanted to hear. Next day, two county sheriffs came to jail to get a "free and voluntary confession". The court ruled that physical coercion used to obtain a confession was a violation of the Fourteenth Amendment. Following this ruling, the Supreme Court focused its attention on cases in which "psychological" rather than physical coercion was used to prompt a confession.

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- U.S. v Tingle, 658 F.2d 1332 (9th Cir. 1981)
- Facts: Federal agents advised a female drug suspect during an interrogation in her home that her 12 year old son will be 37 years old when she gets out of jail.
- Holding: Threat of separation used. Dismissed.

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- State v. Paul Randall Cooper, New Mexico Supreme Court, 1997.
- Applying the three-phase analysis of *Culombe v. Connecticut* (367 US 568 (1961)), the court looked to (1) determining what occurred; (2) determining how the accused reacted to the external facts; (3) determining the “legal significance” of the way the accused reacted to the factual circumstances. Court found the confession voluntary using a totality of the circumstances approach.

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#### Miranda Issues

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- Directs itself to psychological coercion, physical coercion and self incrimination. If a defendant is physically coerced into “waiving” counsel, this would be a violation of a “voluntary” Miranda waiver.
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**Case Law concerning Miranda issues**

- 5th Amendment with 6th Amendment Implications
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- After arriving at the police station, his retained lawyer arrived and asked several times to speak with his client. His request was denied on several occasions. In addition, Escobedo requested to speak with his attorney on several occasions and was told that his attorney did not want to speak to him. Subsequently, the defendant made an admission to the crime and was later found guilty.



- Legal question: Does suspect have a right to an attorney if one is requested during a police station interrogation. YES. Following this decision, states were directed to require police to advise every person arrested for a felony that they have a constitutional right to counsel and silence. Even after this decision, interrogation setting guidelines were unclear.



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- Officers do not need to stop the interrogation when a statement is not a clear, unequivocal request for an attorney. Officers are not required to clarify Defendant's statement or halt their questioning. State v. Gerardo Castillo-Sanchez, New Mexico Court of Appeals 1999.


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### Interrogation Case Law


- Rhode Island v. Innis, 446 US 291 (1980). Facts: Innis was arrested by an officer 5 days after he killed a taxi driver with a shotgun. He told numerous officers, including a Captain, that he wanted an attorney. Officers were instructed by the Captain not to ask him any questions. Within one mile of the arrest site, two of the three transporting officers began a discussion between themselves about the shotgun and the playground nearby, and the mentally challenged children that play there.

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- Innis overheard the conversation between the officers. Within a very short time, Innis interrupted the officers and requested to be returned to the arrest site. He was re-Mirandized and stated that he understood but wanted to get the gun away from any children who could find it. He then led the officers to the weapon hidden under rocks near the road.
- Holding: Based on totality of the circumstances, officers did not know what Innis' reaction would be, therefore there was no interrogation.
- People v. Ferro, 63 NY2d 316 (1985). Facts: Ferro arrested for burglary and receiving. He invoked right to silence and requested an attorney upon questioning. He was placed in a holding cell. Fur coat, one of the items stolen and recovered, was placed in front of his cell, but nothing was said and nothing was asked. Ferro subsequently made incriminating statements.
- Holding: Officers knew or should have known that their action would have caused a response from Ferro. Since Ferro had requested an attorney, the statement was not admitted.



- Innis overheard the conversation between the officers. Within a very short time, Innis interrupted the officers and requested to be returned to the arrest site. He was re-Mirandized and stated that he understood but wanted to get the gun away from any children who could find it. He then led the officers to the weapon hidden under rocks near the road.
- Holding: Based on totality of the circumstances, officers did not know what Innis' reaction would be, therefore there was no interrogation.



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Facts: Two subjects arrested for felony and placed in a patrol car. Officer leaves the car and also leaves a recorder running under the back seat. No questions were asked of either subject. They made incriminating statements to each other and these were recorded and introduced as evidence.
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- State v. Ruben Rubio, New Mexico Court of Appeals 2002. "The benchmark of whether a Miranda waiver is valid is the absence of government coercion or overreaching." The Court rejected the defendant's argument that because the waiver was administered during the service of a search warrant or because there were several officers present then the waiver is invalid. The Court also noted that there was no evidence of coercion, intimidation, promises, threats, or suggestions, then there is nothing to show that the statements were anything other than voluntary.

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### Emergency Exceptions

- New York v. Quarles, 467 US 649 (1984).  
Facts: Subject was accused of armed rape by a woman who stopped officers and told them that the rapist had gone into a store. He was apprehended in the store. Officer asked the subject in custody, "where's the gun?" Subject tells the officer and the statement and the weapon are used against him in court.
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- Arizona v. Roberson, 486 US 675 (1988). Facts: Roberson arrested at scene of burglary and invoked his right to attorney. Interrogation stopped. Three days later he was still in custody and re-advised by another officer and questioned about an unrelated burglary. He provided incriminating statement about the second burglary.
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- Minnick v. Mississippi, 498 US 146 (1990). Facts: Robert Minnick and James Dyess escaped from the Mississippi State Prison and burglarized a residence. They killed two residents. They fled south to Louisiana and into Mexico, where they separated. Minnick was arrested in San Diego County. He was Mirandized and interrogated by federal agents. He stated that he would talk "a little." He talked about the escape but upon questioning about the murders he requested an attorney.

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- The agents terminated the interview. Minnick conferred with this attorney three times. Two days later he was removed from his cell, Mirandized and re-interviewed by San Diego county deputies. He confessed to the escape, admitted the murders and implicated his partner, Dyess.
- Holding: Once the right to an attorney has been invoked, interrogation must cease, and officials may not reinstate interrogation without counsel present.

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- Illinois v. Perkins, 496 US 292 (1990). Facts: Perkins was incarcerated for aggravated battery. An informant told police that Perkins had admitted a killing in St. Louis. Police placed an undercover officer in the same cell block as Perkins. Undercover officer began to talk of an escape with Perkins and other prisoners. During this planning the U/C asked Perkins if he had ever "done" anyone. Perkins then gave singular and graphic details of the murder. Perkins was later charged with 1st degree murder.

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- Holding: The Court held that the coercive atmosphere that Miranda was designed to protect is not present when an incarcerated person speaks freely to someone whom he believes to be a fellow inmate and whom he assumes is not an officer having official power over him. In such circumstances, Miranda does not forbid mere strategic deception by taking advantage of a suspect's misplaced trust. Statements were admissible.

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#### Conclusion

- There are many effective techniques to secure a confession that is voluntary. Being an effective interviewer takes practice and development of techniques.
- The interviewer and interrogator must remain within constitutional law to obtain statements or a confession.

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## STUDENT STUDY GUIDE

## INTERVIEWS AND INTERROGATIONS

## Instructional Objectives:

1. Know the difference between interview and interrogation and their definitions.
2. Know the importance of both.
3. Understand the legal requirements concerning interviews and interrogations. Be able to discuss case law pertaining to issues with interview and interrogations.

## I. INTRODUCTION

- A. Once a suspect in a crime has been arrested, the investigator's job is not finished. The matter of proof and prosecution remain. It is the duty of each officer to attempt to secure a \_\_\_\_\_ from suspects they have arrested. Once again, legal considerations must always be kept in mind to ensure that any statement is admissible in court. Interviews and interrogations are a different hat the investigator must wear. Putting the officer's psychological talents to work may come into play to enhance the chances of a suspect admitting his or her role in a crime.

## II. INTERVIEW VS. INTERROGATIONS

- A. To be a good interviewer or interrogator, the investigator must apply certain physical and psychological techniques to the person being interviewed to persuade him or her to divulge \_\_\_\_\_. In the case of the interview, it's the investigator's job to gain confidence; to create an atmosphere in which the subject can be relaxed enough to recall and explain details of a suspected crime. When a suspect is being interrogated, the investigator must gently and skillfully break down the subject's \_\_\_\_\_ to gain an admission or confession, and do so while staying within the constraints of constitutional law. It is generally accepted that a person will confess to anything if enough pressure or intimidation is applied. But is a "confession" really a truthful statement under these circumstances? NO!

- B. During the course of an investigation, many interviews and several interrogations may take place. The distinction may be often blurred, but can be expressed in terms of the \_\_\_\_\_ of the contact.
- C. Definitions:
1. Interview: a relatively \_\_\_\_\_ conversation conducted for the purpose of obtaining information. The person questioned is believed to possess knowledge that is of official interest to the investigator.
  2. Interrogation: a \_\_\_\_\_ questioning of a person suspected of involvement in a crime for the purpose of obtaining a confession. A conversation to obtain information that someone does not wish to disclose. Custodial questioning is initiated by a law enforcement officer after a person has been taken into custody or otherwise deprived of his \_\_\_\_\_ of action in a significant way.
  3. Interviews may involve virtually anyone, including informants, witnesses, victim, cooperating citizens, and even the suspect. \_\_\_\_\_ are taken and major points are reviewed. The interview process occurs either before the case focuses on a particular person or in a place where the suspect can clearly terminate the interview at any time.
  4. Legal guidelines affecting the two activities differ considerably as the probability increases that the person being questioned may \_\_\_\_\_ himself or herself.
- D. Importance of both
4. Interview – A major part of any investigation is devoted to interviews.
    - a) Interview constitutes the \_\_\_\_\_ source of information
    - b) May appear to be simple, however, the interview process needs to be well structured, following a \_\_\_\_\_.
  5. Interrogations – sometimes conducted while suspect is in custody.

- a) Sole purpose of an interrogation is to obtain a \_\_\_\_\_.
  - b) Highly structured, can be \_\_\_\_\_ consuming event.
  - c) Purpose is to \_\_\_\_\_ the guilty.
6. Two types of persons you will deal with
- a) \_\_\_\_\_ – if the person to be interviewed is a willing participant, the only thing required is good interviewing techniques.
  - b) \_\_\_\_\_ – if the individual to be interviewed is an unwilling participant, you must first assist that individual in becoming a willing participant and then use good interviewing technique.
  - c) YOU MAY NOT ALWAYS BE ABLE TO MAKE ALL PARTICIPANTS \_\_\_\_\_.

### III. The Interview Process

- A. The interview is a form of communication used extensively by law enforcement. It is used in many ways to learn \_\_\_\_\_ from the subject being interviewed. For example: screening job applicants, extracting information from witnesses or victims of a crime, obtaining a confession from a suspect. Interviews of cooperating citizens and witnesses are often conducted \_\_\_\_\_ the office. More often than not, however, the officer will have more productive interviews if conducted at a location where the subject is mentally \_\_\_\_\_, such as his or her own home or place of business. Because of legal and technical considerations, investigators should try to follow certain guidelines when conducting an interview.

Officers should take time to prepare properly for the interview. Sometimes this is done quickly and may consist of no more than a \_\_\_\_\_ review of details of the case. Some type of preparation should \_\_\_\_\_ the actual contact with the interview subject.

## K. General qualifications for a successful interview:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_ and Place of interview
4. \_\_\_\_\_
5. \_\_\_\_\_ up period
6. \_\_\_\_\_
7. \_\_\_\_\_ of questioning
8. \_\_\_\_\_ considerations

L. Rapport – The relationship built on \_\_\_\_\_ and confidence. An absolute necessity for a success. Initial part of the interview. This must be established prior to moving to the next step in the interview. If a rapport is not established, it will be very difficult to obtain a good interview or obtain a \_\_\_\_\_. Rapport can be established through simple similarities that allow the suspect to have something in common with the investigator, such a birth dates, home towns, former occupations, children, parenting problems, similar \_\_\_\_\_, etc.

M. Personality – People can trust you; no air of superiority, be sympathetic, understanding and \_\_\_\_\_.

N. Time and Place – the \_\_\_\_\_ chooses the time and the place.

1. Time – as soon as possible. Make sure you have \_\_\_\_\_ all available information on the case and the person to be interviewed. Prepare questions in advance to add to the flow of conversation and give \_\_\_\_\_ to the interview.
2. Place – A quiet location with \_\_\_\_\_ and no distractions. The greatest amount of privacy possible encourages clarity of

thought and protects the \_\_\_\_\_ of the interview.

O. Preparation – Well prepared pattern of questions that follows known \_\_\_\_\_.

1. Mentally \_\_\_\_\_ the case
2. Have \_\_\_\_\_ to help guide the questioning. Make a check list if necessary. Use only when needed so you can devote your attention to the subject.
3. If possible, obtain some \_\_\_\_\_ information on the witness.

P. Warm up period. The first few minutes will establish the atmosphere.

1. Establish a \_\_\_\_\_ interest
2. If you think it would be helpful, discuss the importance of witness \_\_\_\_\_.
3. Establish \_\_\_\_\_ communication.
4. Work your way into the case. \_\_\_\_\_ from the rapport building into the case.

Q. Questioning

1. Allow the witness to tell “their \_\_\_\_\_.”
2. After the witness has told their story:
  - a) \_\_\_\_\_ it with them.
  - b) Have them amplify on important matters, \_\_\_\_\_ of the offense.

- c) \_\_\_\_\_ the conversation.
- d) \_\_\_\_\_ important facts with other known facts.
- e) Inaccuracies, falsehoods, \_\_\_\_\_ or mistakes require additional questioning.

3. Characteristics of Effective and Ineffective Interviewers:

- a) Effective interviewers ask more open ended questions and allow the witness to appear to \_\_\_\_\_ the interview.
- b) Ineffective interviewers ask more direct \_\_\_\_\_ answer questions.
- c) Ineffective interviewers often \_\_\_\_\_ the witness in the middle of a narrative description.
- d) Ineffective interviewers, by the sequence of their questions, often seem \_\_\_\_\_ and generally unaware of the mental activities of the witness.

R. Technique of questioning

- 1. One question at a time
- 2. Avoid implied answers – \_\_\_\_\_ the answer defeats the purpose.
- 3. Use \_\_\_\_\_ questions.
- 4. Control the interview
  - a) Avoid \_\_\_\_\_ interviews

- b) \_\_\_\_\_ questions that were not answered or avoided. Answering a question with a question indicated deceptiveness.
5. Use close-ended questions sparingly. This type of question doesn't elicit \_\_\_\_\_ information from the subject, as it simply permits the person to confirm or deny information being offered.
  6. Ask open-ended questions that force the interviewee to relate in his or her own \_\_\_\_\_ what was observed.
  7. Avoid hypothetical questions as they tend to make the interviewee \_\_\_\_\_ at a certain response or to tell the interviewer what he or she wants to hear.
  8. Avoid asking \_\_\_\_\_ or leading questions that contain the answer and require the person being interviewed to choose between the lesser of two evils.
  9. Be a good listener. Let the interviewee speak freely, listen closely and evaluate not just what is being said, but \_\_\_\_\_ it is being said. Control the interview, don't dominate it.

S. Special Considerations

1. Juveniles – \_\_\_\_\_ must be notified of the purpose of the interview and the nature of the information sought from the juvenile.
2. Re-interviewing witnesses.
  - a) This should be \_\_\_\_\_, but may be necessary.
3. Take \_\_\_\_\_ notes. Avoid interrupting the subject and writing profusely will slow down the interview. The witness may become \_\_\_\_\_ and forget important details. Some people are naturally nervous speaking in the presence of someone recording everything they say. Brief notes are the prescribed method of recording the conversation. The interviewer should listen carefully and not lose eye contact with the witness.

4. Adjourn properly. Just as you begin with a proper introduction, end properly. You might \_\_\_\_\_ the interview briefly, then thank the witness for their time, thus creating a favorable impression and encourage further \_\_\_\_\_.

#### IV. The Interrogation Process.

- A. "An art whereby, through the use of questions and observations, the truth is elicited from a suspect by sound \_\_\_\_\_ and understanding without threats, or promises"
1. The principles of interrogation follow those principles of \_\_\_\_\_.
2. All interviewing needs to be completed \_\_\_\_\_ to an interrogation.
3. \_\_\_\_\_ the suspect with your department's opinion.
4. Level of \_\_\_\_\_ by suspect
5. Eight points about the interrogation
  - a) It is \_\_\_\_\_
  - b) Total \_\_\_\_\_ of the conversation by the interrogator
  - c) \_\_\_\_\_ is certain. Remember, when circumstantial evidence points towards one person, that person may be the person who committed the offense. But you must \_\_\_\_\_ that information with known facts.
  - d) Evidence can be insinuated; baiting questions can deal with their real or nonexistent evidence within reason. You can \_\_\_\_\_ to a suspect during questioning.



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- e) \_\_\_\_\_ is required when the suspect is in custody or the suspect has been arrested and has been arraigned on the charge you are questioning him on.
- 1) If a person invokes his request for an attorney, all questioning must \_\_\_\_\_. The \_\_\_\_\_ is the only one who can re-initiate the conversation.
- 2) “Do you think I need a lawyer” is not an invocation of his \_\_\_\_\_ to remain silent. Although you cannot make that choice for him.
- 3) Defendant’s statement after being advised of his Miranda rights, “I don’t know if I will answer them...ask me something,” was a clear \_\_\_\_\_ of his rights.
- 4) Miranda warnings are not required where the questions asked are prompted by a concern for public \_\_\_\_\_.
- f) \_\_\_\_\_ of the interview is not limited, but keep it within 2-4 hours with breaks. Keep a log of the breaks, length of the break and how long the break was.
- g) Privacy is required. No \_\_\_\_\_.
- h) \_\_\_\_\_ notes or tape recorders on first run through, but is acceptable in some cases.
4. Room setting
- a) Privacy, no physical barriers, you need to observe the body \_\_\_\_\_ of the suspect.
5. Goals of the interrogation
- a) Get a \_\_\_\_\_/admission of guilt from suspect

- 
- b) Identify the \_\_\_\_\_ and innocent
  - c) Identify the \_\_\_\_\_
  - d) Develop \_\_\_\_\_ information (MO and circumstances of the crime).
  - e) Provide \_\_\_\_\_ for use by prosecutors in possible court action.
6. Confessions must be obtained without the use of \_\_\_\_\_ force, threat of force, promises or coercion. Do not use separation from family as a ploy.
- a) Coercion is defined as the use or threat of use of \_\_\_\_\_ physical methods to induce a suspect to make an admission or confession.
  - b) Duress is the imposition of restrictions on physical behavior, such as prolonged interrogation, \_\_\_\_\_ of water, food, or sleep.
7. General Guidelines for interrogations.
- a. Voluntary – if the suspect is not in custody, request they come to your office to discuss the case. Once they have arrived, develop a \_\_\_\_\_; use an office to interrogate that is private. It should be plain (no distractions). Advise the suspect what you are going to do, i.e. question him. Advise him he is free to go at anytime and they are not under \_\_\_\_\_.
  - b. Any questions or statements made by the interrogator as long as it would not \_\_\_\_\_ or allow an innocent person to confess. Do not use threat of separation from family.
  - c. One on one questioning.

- d. Observe behavior of suspect during \_\_\_\_\_ questioning.
- e. Command the interview. Use the suspect's first name during preliminary questioning. If the interrogator is not \_\_\_\_\_ in the interview, the suspect will be.
- f. Decrease your police, punitive and authority image. No \_\_\_\_\_ if possible.
- g. Increase your \_\_\_\_\_ and understanding image.
- h. Use " \_\_\_\_\_ " words
- 1) "took" instead of stole
  - 2) "Sex with" instead of rape
  - 3) Entered instead of burglarized
  - 4) Use mistake instead of crime
- i. Point out that illegal acts are like \_\_\_\_\_ – once you step into the area, things get worse and worse.
- j. Point out that \_\_\_\_\_ insignificant acts lead to major cases. No matter what the interrogations concerns, this case is different. It is unique, a fluke. The suspect is at a crossroad in his life. Now is his \_\_\_\_\_ to tell the truth.
- k. A \_\_\_\_\_ is sometimes as good as a confession. Remember that it is hard to keep telling the same story time after time if it did not happen. The suspect has to \_\_\_\_\_ what he told you the time before. The

truthful subject will tell you the same story time after time because it really happened. It will not change substantially.

8. Steps to effective interrogation:

- a. Direct or positive \_\_\_\_\_.
- b. Theme development
  - 1) Theme 1: Sympathize with the suspect by saying “anyone else under similar \_\_\_\_\_ or circumstances might have done the same thing.”
    - (a) Shows \_\_\_\_\_
    - (b) \_\_\_\_\_ relief
    - (c) Allows the suspect to \_\_\_\_\_ their actions.
  - 2) Theme 2: Minimize the \_\_\_\_\_ seriousness of the offense.
    - a) \_\_\_\_\_ the offense
    - b) A lot of people have done what you did but you were \_\_\_\_\_.
    - c) Reduces \_\_\_\_\_ feelings of the suspect.
  - 3) Theme 3: Suggest a less revolting and more morally \_\_\_\_\_ motivation or reason for the offense.
    - a) “It was an \_\_\_\_\_”; you may have been drunk when it happened”

- 
- b) "Was it planned out or an accident"; "You didn't \_\_\_\_\_ for anyone to get hurt."
- d) Self \_\_\_\_\_. (BE CAREFUL WITH THIS THEME.)
- 4) Theme 4: Sympathizing with the suspect by condemning others.
- a) Condemn the victim the other accomplice or any other person who some degree of \_\_\_\_\_ can be placed.
- 5) Theme 5: Appeal to the suspect's pride by well-selected \_\_\_\_\_.
- a) "In all my years of law enforcement, I have never seen anything so well \_\_\_\_\_."
- c. Exaggerate nature or seriousness of the event.
- 1) Exaggerate the amount of \_\_\_\_\_ that was taken.
- 2) Sexual cases: imply \_\_\_\_\_ but the victim got nervous, feared venereal disease, etc.
- d. Handling denials
- 1) Cut them off each time. Don't let them \_\_\_\_\_ their denial.
- e. Overcoming objections.
- 1) "I don't need the money." Answer: That shows me this was a \_\_\_\_\_ of the moment decision.

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- 2) "I'd be too \_\_\_\_\_ to do something like that." Answer: "I'm glad you told me that because that tells me you haven't been doing this all along."
- 3) "I wasn't brought up that way." Answer: "I'm glad you told me that because that tells me that this is out of \_\_\_\_\_ for you."
- f. Keeping suspects attention. They will only hear about \_\_\_\_\_ of what you say to them.
- g. Handling suspects passive moods (body language indicators).
- 1) The suspect becomes less \_\_\_\_\_.
- 2) The suspect moves into the "head and body \_\_\_\_\_ position."
- 3) The suspect appears \_\_\_\_\_.
- 4) The suspect's eyes are glassy and not \_\_\_\_\_.
- 5) The suspect is \_\_\_\_\_ more and more to what you are saying.
- 6) Your theme is starting to have real \_\_\_\_\_ to the suspect.
- 7) The suspect may start to cry.
- a) Let the suspect cry for \_\_\_\_\_ seconds
- b) Don't \_\_\_\_\_ the male who cries, use it to your advantage.
- c) Move \_\_\_\_\_ to the suspect

- d) Give the suspect your \_\_\_\_\_ question.
- h. Presenting the alternative question. An alternative question is a question asked of the suspect, in which the suspect is offered \_\_\_\_\_ incriminating choices concerning some aspect of the crime. Either \_\_\_\_\_ is the first admission of guilt.
- 1) Undesirable action vs. Desirable action
- |              |                      |
|--------------|----------------------|
| repulsive    | weakness             |
| offensive    | Someone else's fault |
| very serious | accidental           |
- (Use accidental as a last resort)
- i. Bring the suspect into the \_\_\_\_\_.
- j. The written confession. Recommend a \_\_\_\_\_ confession.
- k. Get the subject to talk about \_\_\_\_\_.
- l. Use a tone of voice that establishes believability and \_\_\_\_\_.
- m. Don't call the suspect a liar. It creates a contest with him. Don't \_\_\_\_\_ the suspect because he lied—show no emotion.
- n. Don't dictate \_\_\_\_\_ at the suspect, human nature rebels at direct orders, i.e., stop lying, tell the truth.

## 9. Suspect Contact

- a. Handshake – when meeting the suspect, firmly shake his hand, thus allowing the suspect to maintain self-respect. No handshake, but a mere nod of the head acknowledging the suspect's presence, establishes immediate \_\_\_\_\_ of the investigator.
- b. Facial expressions – a calm concerned expression will tell the suspect that the investigator means business. An \_\_\_\_\_ expression will tell the suspect that the investigator can be dominated. Eye to eye contact should be maintained until the suspect looks away. If the suspect looks down, he has \_\_\_\_\_. If he looks 45-90 degrees further steps toward dominance are necessary.
- c. Tone of voice – a lower pitch and \_\_\_\_\_ speech with clipped word ending indicates dominance. This should not be used to initially establish it but as reinforcement during the interrogation.
- d. Stance – Standing with ankles apart indicates dominance. Together indicates submission.

## 10. RPM formula (Rationalize, Project and Minimize)

- a. The psychology of interrogation and how it applies through RPM (Rationalize/ project/ minimize)
  - 1) No one likes to admit that they did something wrong. From birth, we rarely admit guilt without first giving some \_\_\_\_\_, either good or bad, to justify our actions. "She hit me first" or "she started it."
  - 2) As adults, we have not changed. Most of us will not admit to doing wrong without giving some \_\_\_\_\_.



- 
- b. Rationalize
- 1) Try to \_\_\_\_\_ the act
  - 2) \_\_\_\_\_ the consequences
  - 3) \_\_\_\_\_ a reason for the act (theme build)
- c. Projection-- Project the \_\_\_\_\_ on someone else
- 1) Victim left the keys in the car;
  - 2) Victim's style of dress (rape);
  - 3) Victim started it and you \_\_\_\_\_ yourself.
- d. Minimize – downplay the incident in \_\_\_\_\_ to other things that people do.
- 1) You only exposed yourself – other people have attacked and raped girls.
  - 2) This is only a property crime, as opposed to something more serious.
  - 3) This is a first offense and the judge will take this into consideration.
  - 4) Was this an \_\_\_\_\_, were you drunk at the time.
  - 5) Was this \_\_\_\_\_ out or did it happen all of a sudden?

11. A study was conducted by questioning polygraph examiners about behavior manifestations they observed in deceptive individuals. They are:
- a. \_\_\_\_\_ mouth. 14 times more in lying subjects than in truthful.
  - b. \_\_\_\_\_ in agreeing to take the examination. Over 5 times more deceptive persons were slow in consenting to take the examination than the truth teller.
  - c. Hesitating in responding to \_\_\_\_\_. 5 times more persons were found to be lying than truthful when they hesitated in responding to questions they should have been able to answer without such hesitation.
  - d. Vague in discussing the issue. Lying subjects were 10 times more apt to be vague or give \_\_\_\_\_ verbal answers to questions.
  - e. Poor eye contact. Lying subjects manifested poor eye contact more than \_\_\_\_\_ times than the truthful subjects.
  - f. Bringing hand to head. The lying subject tended to bring his hand to his head \_\_\_\_\_ times more than the truthful subject.
  - g. Frequently interrupting the examiner. The liar tended to interrupt the examiner \_\_\_\_\_ times more than the truthful subject.
  - h. Looking at the watch. The liar tended to look at his watch \_\_\_\_\_ times more than the truthful subject.
  - i. \_\_\_\_\_ or adjusting the clothing. (including pulling up socks, brushing off trousers or skirt, picking imaginary lint, reinforcing crease). Liars engaged in this type of behavior 8 times more than the truthful subject.
  - j. Crossed arms (barriers). Liars kept their arms crossed \_\_\_\_\_ times more than the truthful person.

k. Crossed legs. Liars crossed their legs \_\_\_\_\_ as often as truthful subjects.

l. Feet under the chair. Displayed \_\_\_\_\_ as much as the truthful.

## V. LEGAL REQUIREMENTS

- A. According to early English \_\_\_\_\_ Law, the confession of a suspect was by far the most important type of evidence against an accused person. In many cases, failure to produce such evidence was the equivalent to not having any evidence at all. Therefore, the investigators vigorously pursued a confession at all costs, with little regard for the rights of those accused or the fairness of their methods.

Techniques for obtaining the confession included submersion in water, stretching, branding, and other types of physical and psychological torture. Today, such tactics have been replaced with legal guarantees of fairness, such as the Bill of Rights, the Constitution, and statutes prohibiting the use of \_\_\_\_\_ or duress in the interrogation process. Still, the confession reigns as one of the most influential types of evidence in a court proceeding.

- B. Two constitutional amendments are involved in the area of interviews and interrogations.

1. \_\_\_\_\_ Amendment – no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or \_\_\_\_\_ of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.
2. \_\_\_\_\_ Amendment – In all criminal prosecutions, the accused shall enjoy the right to a \_\_\_\_\_ and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the

witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

3. Due process equals fundamental fairness. Fundamental fairness equals reasonableness/\_\_\_\_\_

a) Confessor:

(1) Must have the \_\_\_\_\_ ability to know he is confessing.

(2) \_\_\_\_\_ to understand what is happening.

(3) Criminal \_\_\_\_\_

(4) \_\_\_\_\_ by drugs or alcohol.

b) Environment

(1) \_\_\_\_\_

(2) Number of \_\_\_\_\_ present

(3) Visibility of \_\_\_\_\_ (attempt to conceal or negate presence.)

c) Tactics

(1) Use or threat of \_\_\_\_\_

(2) \_\_\_\_\_ of leniency

(3) \_\_\_\_\_

(4) Threat of \_\_\_\_\_ from family

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VI. CASE LAW

## A. Due Process/Test of being voluntary

## 1. Colorado v. Connelly, 107 S. Ct. 515 (1986)

- a) Facts: Voice of God told Connelly to confess or to kill himself. Mirandized four times by various police officers, but claimed he could not make a \_\_\_\_\_ statement because of his state of mind.
- b) Holdings: There was no interrogation or government involvement. Confession stands.

## 2. Brown v. Mississippi, 297, U.S. 278 (1936)

- a) Facts: Defendant Ellington taken from his home to the home of homicide victim. Interrogated. Denied involvement. Hung from tree by neck and lowered twice. No confession. Tied to tree and whipped. No confession. Arrested. Taken to jail and whipped until he confessed.
- b) Defendants Brown and Shields arrested the same day and whipped in the jail until confessed to what “the mob” of citizens wanted to hear. Next day, two county sheriff’s came to jail to get a “free and voluntary confession”
- c) In Brown v. Mississippi, the court rules that physical coercion used to obtain a confession was a violation of the \_\_\_\_\_ Amendment. Following this ruling, the Supreme Court focused its attention on cases in which “psychological” rather than physical coercion was used to prompt a confession.

3. U.S. v Tingle, 658 2<sup>nd</sup> 1332, 9<sup>th</sup> Circuit (1981)
  - a) Facts: Federal agents advised a female drug suspect during an interrogation in her home that her 12 year old son will be 37 years old when she gets out of jail.
  - b) Holding: Threat of \_\_\_\_\_ used. Dismissed.
- 4 U.S. v Whitworth, 86-1256 9<sup>th</sup> Cir., (decided 9-88)
  - a) Facts: The nation spy case. Whitworth was interviewed by FBI agents at his residence. He made incriminating statements about his espionage activity. The agents made no threats, no show of weapons, told Whitworth he was not under arrest, and Whitworth signed a waiver. He claimed violation of due process because of the interviewing techniques, and stated he was subjected to “psychological warfare” by the FBI agent’s techniques.
  - b) Holdings: Court considered the totality of the \_\_\_\_\_, all area of the alleged violation of Due Process. Found no violation.

#### B. Miranda Issues

1. Law is court created. Does not originate in the \_\_\_\_\_.
2. Directs itself only to \_\_\_\_\_ coercion and self incrimination.
3. Involves the Right to counsel and the Right to Silence (5<sup>th</sup> Amendment) and is applicable to the \_\_\_\_\_ through the 14<sup>th</sup> Amendment.
4. Involves three issues:
  - a) \_\_\_\_\_. Arrest or restraint of action in a significant manner. Applies to misdemeanors and felonies.

- b) \_\_\_\_\_. Direct or functional equivalent: words or actions by police that they know or should know will elicit an incriminating statement from the suspect.
- c) Warnings or \_\_\_\_\_. Required only if custody and interrogation are present. Waiver must be knowing, intelligent and voluntary. Rights cannot be claimed by an attorney. May only be invoked by subject. Careful of equivocal waivers by manner of the subject's responses like, "do I need a lawyer?" If attorney is requested, you can only re-interview the subject only if he initiates the contact. Re-advising the defendant of the Miranda warning does not \_\_\_\_\_ the defect.

5. Case Law concerning Miranda issues

- a) 5<sup>th</sup> Amendment with 6<sup>th</sup> Amendment Implications
- b) Note: Escobedo v. Illinois (1964), held the focus of the investigation was basis of advising rights. Miranda (1965) changed this to the two issues of \_\_\_\_\_ and \_\_\_\_\_.
- c) Escobedo v. Illinois: Escobedo was arrested without a warrant and interrogated in connection with a murder. On the way to the police station, officers told Escobedo that he had been implicated as the murderer and that he should admit to the crime. He then requested to speak to an attorney. After arriving at the police station, his retained lawyer arrived and asked several times to speak with his client. His request was denied on several occasions. In addition, Escobedo requested to speak with his attorney on several occasions and was told that his attorney did not want to speak to him. Subsequently, the defendant made an admission to the crime and was later found guilty.
- d) Legal question: Does suspect have a right to an attorney if one is requested during a police station interrogation. YES. Following this decision, \_\_\_\_\_ were directed to require police to advise every person arrested for a felony that they have a constitutional right to counsel and silence. Even after this decision, interrogation setting guidelines were unclear.

- e) Miranda v. Arizona (1966). Miranda, a 23 year old, was arrested and transported from his home to the police station for questioning in connection with a kidnapping and rape. He was poor and uneducated. After two hours of questioning, officers obtained a written confession that was used against him in court. He was found guilty of the kidnapping and rape.
- f) Legal question: do the police have a responsibility to inform a subject of an interrogation of constitutional rights involving self-incrimination and a right to \_\_\_\_\_ before questioning? YES.
- g) Suspect must also agree, freely and \_\_\_\_\_, to waive them before police can begin questioning. Suspect may invoke his right to stop answering questions any time during the interrogation.
- h) Oregon v. Mathiason. Facts: Mathiason was requested to appear at station to discuss a burglary. He was interrogated for 30 minutes without being Mirandized. Confessed. Released. Charged. Later arrested. Holding: Mathiason not in custody, therefore \_\_\_\_\_ not required.
- i) Berkemer v. McCarty (1984). Facts: Traffic stop interrogation. Holding: Miranda not required, traffic stop is an \_\_\_\_\_ to that rule.

### C. Interrogation Case Law

1. Rhode Island v. Innis (1980). Facts: conversation between two officers which was overheard by Innis. Innis surrenders himself to an officer 5 days after he killed a taxi driver with a shotgun. He tells numerous officers, including a Captain, that he wants an attorney. Officers are instructed by the Captain not to ask him any questions. Within one mile of the station house, two of the three transporting officers begin a discussion among themselves about the shotgun and the playground nearby, and the mentally challenged children that play there. Within a very short time, Innis interrupts the officers and requests to be returned to the arrest site. He is re-Mirandized and leads the officers to the weapon hidden under rocks near the road.



- a) Holding: Based on totality of the circumstances, officers did not know what Innis' reaction would be, therefore there was no \_\_\_\_\_.
2. People v. Ferro (1985). Facts: Ferro arrested for burglary and receiving. He invoked right to silence and requested an attorney upon questioning. He was placed in a holding cell. Fur coat, one of the items stolen and recovered, was placed in front of his cell, but nothing was said and nothing was asked. Ferro subsequently made incriminating statements.
- a) Holding: Officers knew or should have known that their action would have caused a \_\_\_\_\_ from Ferro. Since Ferro had requested an attorney, the statements were not admitted.
3. People v. Crowson (1983). Facts: Two subjects arrested for felony and placed in a patrol car. Officer leaves the car and also leaves a recorder running under the back seat. No questions were asked of either subject. They made incriminating statements to each other and these were recorded and introduced as evidence.
- a) Holding: Admitted, no expectation of \_\_\_\_\_ in a patrol unit.

#### D. Emergency Exceptions

1. N.Y. v. Quarles (1984). Facts: Subject robbed a store in NY and was apprehended at or near the scene. Officer asked the subject in custody, "where's the gun?" Subject tells the officer and the statement and the weapon are used against him in court.
- a) Holding: Exception to the Miranda rule is in the interest of public \_\_\_\_\_. Statement and seizure of weapon good.

#### E. Interrogation after invocation of rights

1. Michigan v. Mosely (1975). Facts: Subject arrested for robbery of a bar and restaurant. Mirandized. Stated he did not want to talk about the robberies

and all questioning ceased. Two hours later he was re-Mirandized by another detective and questioned about a robbery and murder at a third bar. Waived his rights and made incriminating statements that were used to convict him.

- a) Holding: Subject invoked his right to \_\_\_\_\_ and not to an attorney, therefore, officer could re-contact the defendant.
2. Oregon v. Bradshaw (1983). Facts: Subject arrested, mirandized, and requested an attorney. He then indicated a willingness for further discussion by stating, "What's going to happen now?" and "What's going to happen next?"
  - a) Holding: Officer have a right to \_\_\_\_\_ whether the suspect still requests an attorney.
3. Arizona v. Roberson (1988). Facts: Roberson arrested at scene of burglary and invoked his right to attorney. Interrogation stopped. Three days later he was still in custody and re-advised by another officer and questioned about an unrelated burglary. He provided incriminating statement about the second burglary.
  - a) Holding: Invoking of right to counsel is \_\_\_\_\_ and cannot be questioned until that right has been met, or custody has been released or defendant \_\_\_\_\_ contact.
4. Minnick v. Mississippi (1990). Facts: Robert Minnick and James Dyess escaped from the Mississippi State Prison and burglarized a residence. They killed two residents. They fled south to Louisiana and into Mexico, where they separated. Minnick was arrested in San Diego County. He was Mirandized and interrogated by the FBI who did not know he had requested an attorney and who wished to talk to him about related federal crimes. He stated that he would talk "a little." He talked about the escape but upon questioning about the murders he requested an attorney. The agents terminated the interview. Minnick conferred with this attorney three times. Two days later he was removed from his cell, Mirandized and re-interviewed by San Diego county deputies. He confessed to the escape, admitted the murders and implicated his partner, Dyess.

- a) Holding: Once the right to an attorney has been invoked, nothing else is \_\_\_\_\_ unless the defendant \_\_\_\_\_ contact.

F. Related issues

1. Illinois v. Perkins. Facts: Perkins was incarcerated for aggravated battery. An informant told police that Perkins had admitted a killing in St. Louis. Police placed an undercover officer in the same cell block as Perkins. Undercover officer began to talk of an escape with Perkins and other prisoners. During this planning the U/C asked Perkins if he had ever “done” anyone. Perkins then gave singular and graphic details of the murder. Perkins was later charged with 1<sup>st</sup> degree murder.
- a) Holding: The court held that “although there is custody and interrogation, there is no need to provide Miranda warnings in this situation.” Miranda is not required when the defendant is \_\_\_\_\_ that he is speaking to an officer and makes a statement \_\_\_\_\_.

VII. Conclusion

- A. There are many effective techniques to secure a confession that is voluntary. Being an effective interviewer takes \_\_\_\_\_ and development of techniques.
- B. The interviewer and interrogator must remain within \_\_\_\_\_ law to obtain statements or a confession.

**INSTRUCTOR NOTES:**

- REVIEW COURSE GOAL AND OBJECTIVES
- SOLICIT QUESTIONS FROM PARTICIPANTS
- ANSWER ANY QUESTIONS
- CONCLUDE WITH CLASS



## COURSE AUDIT

PRIMARY INSTRUCTOR:

SECONDARY INSTRUCTOR:

SUPPORT STAFF (i.e.: Scenario Managers, Role Players, etc):

DATE(S)/ TIME(S) OF INSTRUCTION:

LOCATION OF INSTRUCTION:

RECOMMENDED CURRICULUM CHANGES: Identify inaccurate information, outdated information, new information to be added to update material, etc. (Use additional pages if necessary)

**COURSE AUDIT** (Continued)

ADDITIONAL INSTRUCTOR COMMENTS: (If any portion of the course content was not presented, indicate the specific content here)

If course content other than the NMDPS TRD approved Basic or PST academy curriculum is taught, the alternative curriculum must be submitted to the Law Enforcement Academy Deputy Director's office and approved prior to delivery of the alternative instructional materials.

☐ Alternative curriculum was taught.

Accreditation number of alternative curriculum:

	SIGNATURE	DATE
Primary Instructor	<input type="text"/>	<input type="text"/>
Reviewed by Program Coordinator	<input type="text"/>	<input type="text"/>
Reviewed by Bureau Chief	<input type="text"/>	<input type="text"/>
Reviewed by LEA Director or Designee	<input type="text"/>	<input type="text"/>